

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

EX PARTE APPLICATION PURSUANT TO 28
U.S.C. § 1782 FOR LEAVE TO TAKE
DISCOVERY FOR USE IN FOREIGN
PROCEEDINGS,

Applicant.

Case No. 20-mc-00312-ER

STIPULATION AND [PROPOSED] ORDER REGARDING STAY OF PROCEEDINGS

WHEREAS, on September 2, 2020, Applicant Eurasian Natural Resources Corporation Limited (“ENRC”) commenced these proceedings against Respondent HarperCollins Publishers LLC (“HarperCollins US”) by way of an *ex parte* application under 28 U.S.C. § 1782 (the “Application”) to serve a subpoena (the “Subpoena”) for discovery in aid of certain foreign proceedings, including proceedings issued on August 27, 2021 in the High Court of Justice, Queen’s Bench Division, Media and Communications list in England against Tom Burgis and HarperCollins Publishers Limited, case number QB-2021-003297 (the “HarperCollins UK Action”);¹

WHEREAS, on September 9, 2020, the Court granted the Application *ex parte*, allowing ENRC to serve the Subpoena on HarperCollins US;

WHEREAS, on November 24, 2020, HarperCollins US filed a motion to quash the Subpoena or in the alternative for a protective order, ECF No. 23 (the “Motion to Quash”);

WHEREAS, on November 24, 2020, HarperCollins US filed a letter motion requesting oral argument on the Motion to Quash, ECF No. 28;

¹ ENRC has also issued a related foreign action against Tom Burgis and the Financial Times Limited in England, case number QB 2021 003301 on the same date (the “FT Action”).

WHEREAS, on February 23, 2021, briefing on the Motion to Quash completed with the filing of ENRC's sur-reply, ECF No. 43;

WHEREAS, on October 1, 2021, (i) the Defendants in the FT Action filed an application for an order from the English High Court striking out particulars of financial loss, and alternatively entering summary judgment, in respect of the claims in that action, and (ii) the defendants in the HarperCollins UK Action filed an application for a preliminary hearing of certain issues, including whether the HarperCollins publication refers to the Applicant and if so, (a) the natural and ordinary meaning of statements complained of; (b) whether they are defamatory of the Applicant; (c) whether the statements are fact or opinion; and (d) if statements of opinion, whether the statements indicated the basis for that opinion. If the court decides that the HarperCollins publication does not refer to the Applicant, this would result in striking out that action (collectively, the "UK Applications");

WHEREAS, on December 29, 2021, the Court scheduled oral argument on the Motion to Quash for January 26, 2022 (the "Oral Argument");

WHEREAS, as of the date of this Stipulated Order, the UK Applications remain pending (the hearing in the HarperCollins UK Action is listed to be heard on February 8, 2022 and the FT Action is listed for March 24-25, 2022), and will remain pending as of the date set for Oral Argument; and

WHEREAS, because the pending UK Applications could affect the relief sought in these proceedings, the parties wish to stay the proceedings before this Court and, to avoid burdening the Court with unnecessary argument, adjourn oral argument on the Motion to Quash;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, between ENRC and HarperCollins US, by their undersigned counsel, that, pending approval by the Court,

the above-captioned proceedings shall be stayed and the Oral Argument adjourned, until resolution of the UK Applications, at which time the parties shall update the Court by letter and propose remaining next steps, if any, in these proceedings;

IT IS FURTHER STIPULATED AND AGREED, nothing herein shall waive or prejudice any party's rights, remedies, arguments or defenses, in connection with the Application or the Motion to Quash.

Dated: January 18, 2022
New York, New York

BOIES SCHILLER FLEXNER

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SO ORDERED

Hon. Edgardo Ramos
United States District Judge